

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK**

AGL INDUSTRIES, INC.,

Plaintiff,

-against-

CONTINENTAL INDEMNITY COMPANY;
APPLIED UNDERWRITERS, INC.; APPLIED
UNDERWRITERS CAPTIVE RISK
ASSURANCE COMPANY, INC.; and APPLIED
RISK SERVICES, INC.,

Defendants.

Civil No.: 1:17-cv-4179 (PKC)

**NOTICE OF MOTION
TO TRANSFER VENUE
PURSUANT TO FORUM
SELECTION CLAUSES
AND TO COMPEL PLAINTIFF
TO POST A BOND FOR
SECURITY UNDER FRCP 65(C)**

Oral Argument Requested

PLEASE TAKE NOTICE that defendants, Continental Indemnity Company (“Continental”), Applied Underwriters, Inc (“AUP”), Applied Underwriters Captive Risk Assurance Company Inc. (“AUCRA”), and Applied Risk Services, Inc. (“ARS”) (collectively, the “Defendants”), shall move this Court, before the Honorable Pamela K. Chen, U.S.D.J., at the United States Courthouse, Courtroom 45, 225 Cadman Plaza East, Brooklyn, New York, on the _____ day of _____, 2018, at 9:30 a.m., or as soon thereafter as counsel can be heard, for an order:

1. Transferring the Complaint, pursuant to 28 U.S.C. §1404(a), because all claims and parties in this action are subject to the valid and enforceable forum selection clauses (“FSC”) in the Reinsurance Participation Agreement and Promissory Note requiring any and all disputes to be adjudicated in the courts of Nebraska;
2. Dismissing and/or transferring any remaining claims asserted against non-signatories Continental and ARS pursuant to *forum non conveniens*, FRCP 12(b)(7) and Rule 19, because AUCRA and AUI are necessary and indispensable parties, but cannot be joined in this New York action; or
3. In the alternative, staying any remaining claims in this action pending resolution of the disputes with AUCRA and AUI in a proper forum; and
4. Compelling Plaintiff to post a bond, pursuant to FRCP 65(c), in the amount of \$709,930, to be increased every three months by \$236,643 to the extent coverage

under the Continental Policy continues, due to the Temporary Restraining Order enjoining the cancellation of AGL's Continental Policy that was originally issued in the State Court Action and which has been extended indefinitely by this Court pending a determination of Plaintiff's fully submitted Order to Show Cause; and

5. Granting such other and further relief as this Honorable Court may deem just and proper.

PLEASE TAKE FURTHER NOTICE that in support of this motion, Defendants shall rely upon the attached Declaration of Claire M. Hankin, together with its Exhibits, executed on November 20, 2017, and the Memorandum of Law in Support of Defendants' Motion, submitted herewith, and as well as all prior proceedings and papers filed in this action.

PLEASE TAKE FURTHER NOTICE that pursuant to the parties' Second Joint Stipulation (Dkt. 15), which was So Ordered by this Court on November 14, 2017, opposition papers must be served by or before on January 5, 2018, and reply papers must be served and filed, together with all other motion papers, on January 29, 2018.

PLEASE TAKE FURTHER NOTICE that counsel for Defendants hereby request oral argument.

Dated: November 20, 2017

Respectfully submitted,

**WILSON ELSE MOSKOWITZ
EDELMAN & DICKER LLP**

By: /s/ Claire M. Hankin
Claire M. Hankin
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Tel: (914) 323-7000
Attorneys for Defendants

CERTIFICATE OF SERVICE

I, Claire Hankin, hereby certify that on this 20th day of November 2017, a true and correct copy of the foregoing Notice of Motion to Transfer Venue and to Compel The Posting of a Bond, together with the accompanying Declaration of Claire M. Hankin, the Exhibits annexed thereto, and the Memorandum of Law in Support, was filed through the ECF system, and will be sent electronically to the registered participants, and paper copies will be served via first class mail on those indicated as non-registered participants and the following counsel of record:

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I further certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

/s/ Claire M. Hankin

Claire M. Hankin
Attorneys for Defendants